

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH GEOGHEGAN, et al.

Plaintiff(s),

v.

MONESSEN HEARTH SYSTEMS, et al.

Defendant(s).

No. C 12-2896 PJH

**ORDER GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND**

Defendants' motion to dismiss plaintiffs' complaint came on for hearing before this court on February 27, 2013. Plaintiffs Joseph Geoghegan (individually and as father and next friend of Declan Geoghegan) and Tara Geoghegan did not appear at the hearing. Defendants CFM Majestic U.S. Holdings, Inc. and CFM U.S. Corp. ("defendants") appeared through their counsel, Dana Ulise. Having read the papers filed in conjunction with the motion and carefully considered the arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS defendant's motion, for the reasons stated at the hearing, and summarized as follows.

In their opposition brief, plaintiffs concede that their individual claims are time-barred, and state their intention to proceed only as to the claims brought on behalf of Declan Geoghegan. Thus, defendants' motion to dismiss plaintiffs' individual claims is GRANTED, and those claims are dismissed with prejudice.

Defendants also move to dismiss plaintiffs' claim for punitive damages. Defendants argue that, in order to pursue a punitive damages claim against a corporate entity, plaintiffs must allege that fraud, oppression, or malice was undertaken, authorized, or ratified by an officer, director, or manager of defendants. The court finds that plaintiffs have not so alleged, and therefore GRANTS defendants' motion to dismiss. However, to the extent that defendants seek dismissal with prejudice, their motion is DENIED. Plaintiffs shall have

1 an opportunity to amend the complaint to allege facts sufficient to establish a claim for
2 punitive damages. Plaintiffs shall have until **March 22, 2013** to file an amended complaint
3 in accordance with this order. No new claims or parties may be added without leave of
4 court or the stipulation of all parties. Defendants' response is due no later than 21 days
5 after plaintiffs' amended complaint is filed.

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7 **IT IS SO ORDERED.**

8 Dated: March 1, 2013



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10 PHYLLIS J. HAMILTON
United States District Judge